IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7805 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESH KACHARABHAI PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 06.5.2003

passed by the Commissioner of Police, Ahmedabad City, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 6.5.2003

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority took into consideration two aspects of the matter. Firstly, registration of two crimes against the petitioner under Sections 66(1)(b), 65(a)(e), 81, 83 and 116(1)(b) of the Bombay Prohibition Act on 26.3.2003 and 1.5.2003. Secondly, the detaining authority also took into consideration the statements of the witnesses recorded by the proposing authority in-camera on 04th of May, 2003 and 5th of May, 2003 and verified by the detaining authority on 06.5.2003, revealing the incident took place on 5th of April 2003 and 11th of April, 2003. From the above material, the order impugned in this petition came to be passed.

3. Learned Advocate Ms. DR Kachhawah for the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of solely on the ground that whether there was sufficient material before the detaining authority to reach the subjective satisfaction that the activities of the petitioner were prejudicial to the maintenance of public order. In this respect, placing reliance on statements of two witnesses as recorded by the proposing authority, learned AGP vehemently argued that, it clearly establishes the activities of the petitioner prejudicial to the maintenance of public order. Now, so far as the registration of the crimes is concerned, the fact ipso facto would not establish that since two crimes are registered against the petitioner for the possession of foreign liquor, the activities of the petitioner was prejudicial to the maintenance of public order. Secondly, while going through the statements, it clearly appears that the witnesses have stated incidents wherein the witness was forced to deliver the vehicle of the

witness to the petitioner, and on refusal, he was beaten and the crowd was gathered, while in the other incident, the witness was beaten on the suspicion that the witness was informing the police about the illegal activities of the petitioner. This material before the detaining authority is not sufficient to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to the public order. It is always the length, magnitude and intensity of the questionable activities of a person makes such activity prejudicial to the maintenance of public order or only law and order. There is no material on record to reach to the subjective satisfaction that the petitioner was selling the foreign liquor so as to cause injuries to the public health. The statements recorded by the proposing authority reveal individual quarrel pick up by the petitioner with the witnesses and from this quarrel, it could not be said that the public at large was affected or that a section of society or a locality was affected, that out of fear and terror created by the petitioner, the citizens were so frightened that it was impossible for them to pursue their daily life. At the most, what is revealed by the statements, if they are taken on their face value, is nothing, but a problem with respect to maintenance of law and order, which can be taken care of by the ordinary law. Thus, the subjective satisfaction of the detaining authority is vitiated on this ground alone and the impugned order is required to be set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 06.05.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair